

Paul Alan Levy (pro hac vice)
Public Citizen Litigation Group
1600 20th Street NW
Washington, D.C. 20009
(202) 588-7725
plevy@citizen.org

Stephen Kirby
Kirby Law Office, PLLC
WSBA #43228
1312 N. Monroe St.
Spokane, Washington 99201
(509) 795-4863
kirby@kirbylawoffice.com

Phillip R. Malone (pro hac vice)
Juelsgaard Intellectual Property and Innovation Clinic
Mills Legal Clinic at Stanford Law School
Crown Quadrangle, 559 Nathan Abbott Way
Stanford, California 94305-8610
(650) 724-1900
pmalone@stanford.edu

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

PREPARED FOOD PHOTOS, INC.,
f/k/a ADLIFE MARKETING
& COMMUNICATIONS CO., INC.,
a Florida for profit corporation,

Plaintiff,

v.

POOL WORLD, INC., a Washington for
profit corporation,

Defendant.

No. 2:23-cv-00160-TOR

**FIFTH AFFIRMATION
OF PAUL ALAN LEVY
[REDACTED]**

Hearing March 28, 2025
6:30 PM

1. My name is Paul Alan Levy. I am lead counsel for defendant Pool World.

I make this affirmation in support of defendant's motion to enforce the Court's order compelling plaintiff Prepared Food Photos ("PFP") to produce documents.

2. My co-counsel and I conferred by phone with Daniel DeSouza and Lauren Hausman, counsel for PFP, about the issues raised by this motion to enforce on

1 February 5, 2024, as well as other issues pertaining to adequacy of PFP's compliance
2 with the Court's Order, and we have exchanged several detailed emails about these
3 issues, beginning on January 10 and continuing past the February 5 meet and confer
4 into the last few days of February.
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6 3. Plaintiff produced a number of documents in purported compliance with the
7 court's order to produce documents requested by Request 14 ("Produce all
8 communications, and records of communications, with persons that entered into
9 subscription agreements that were the subject of Requests for Production Nos. 4 and
10 5") and Request 15 ("Produce any and all documents reflecting payments pursuant
11 to subscription agreements that were the subject of Requests for Production Nos. 4
12 and 5"). Requests 4 and 5 sought copies of the PFP subscription agreements on
13 which it predicates its claim for roughly \$145,000 in lost license fees. Although the
14 response to Request 14 was incomplete (as discussed later in this affirmation), the
15 response to Request 15 was so incomplete (and so heavily redacted) as raise issues
16 under Rule 37(a)(4).
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21 4. The initial response to Request 15 included a few large checks, as well as
22 disbursement memoranda from PFP's counsel CopyCat Legal that reflected large
23 lump sum payments by each of the "subscribers" whose agreements were signed in
24 2022 and 2023, indicating that these subscribers were settling infringement claims.
25 The memoranda were heavily redacted without any explanation. An example of the
26 redacted disbursement memoranda is attached as Exhibit DD. Beyond that, the
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1 response to Request 15 consisted largely of a set of short excerpts of monthly
2 statements from Bank of America dated from June 2020 to November 2024, also very
3 heavily redacted (see *infra* ¶ 6). But because many of the subscription agreements
4 date back to 2017, Request 15 called for payment records beginning then.
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6 5. PFP's counsel supplied an affidavit from PFP's President, Douglas Fleurant,
7 saying that PFP keeps its documents for only four years, and then routinely discards
8 them. (A copy of that affidavit is attached as Exhibit EE). After I pointed out to PFP
9 counsel that Bank of America provides online access to bank statements for seven
10 years, PFP provided an additional tranche of bank statements going back to January
11 2018 (that is, seven years before the date of this additional compliance in January
12 2025). It appears that the bank statements from January 2017 through December
13 2017 were not preserved (that is, that PFP failed to download them from Bank of
14 America's online customer portal as soon as Request 15 was served in January 2024;
15 hence they likely disappeared from the online portal over the following year as the
16 seven year window moved up, even though they were requested in time to preserve
17 them).
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22 6. But even the bank statements that were provided in discovery were not in
23 compliance with the Court's order. As shown by the examples attached as Exhibit FF,
24 PFP has provided two to four pages out of bank statements which, as pagination at
25 the bottom of each statement reveals, were several pages long, some as long as 18
26 pages. (Exhibit FF also includes the list of filenames of the documents initially
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provided on December 30 in response to Request 15, with company names redacted).

And even the few pages from the bank statements that were produced are heavily redacted, with only one or more entries on each statement not redacted. And on some of the statements, every one of the entries was redacted. The document request included instructions specifically reminding PFP of the duty to assert and explain any withholding of documents or parts of documents. The request is attached as Exhibit GG. PFP did not object to that aspect of the document request. See DN 55-12, page 156. Nor did PFP argue, in opposition to Pool World's motion to compel, that the documents requested contained privileged or otherwise confidential information that needed to be protected from disclosure. This Court order did not authorize redaction.

7. The redactions to the bank statements are so extensive that counsel can barely make heads nor tails of them. We provided PFP counsel with a list of cases holding that documents must be produced in unredacted form. Neither in response to this email, nor during the February 5 telephonic meet and confer, did PFP counsel engage with the caselaw. PFP counsel Daniel DeSouza simply said that his client did not want to disclose the redacted information, which it claims is unrelated to the issues in this case.

8. During the meet and confer telephone conversation on February 5, Mr. DeSouza implied that many of the payments redacted from the Bank of America statements reflected disbursements from his firm, and from other firms that previously conducted PFP's demand letter practice, providing the fruits of their infringement

1 claims against companies that were **not** subscribers. Mr. DeSouza did not explain
2 why PFP has a legitimate interest in concealing that information. He did not assert
3 that any redacted material was privileged. Nor did he take up the offer from Pool
4 World's counsel to discuss any reasoning about why PFP had a legitimate interest in
5 keeping certain information in the bank statements confidential.
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7 9. But Pool World can use the relevant information about PFP's total revenue
8 from making copyright claims, which Mr. DeSouza has indicated would be reflected
9 in the redacted disbursement memoranda and bank statements, as part of its defense
10 of this case. PFP presents itself as being a company that takes photos and sells
11 monthly licenses to those photos for \$999 per month; Pool World intends to show that
12 PFP's primary activity and primary source of revenue is settlements (and default
13 judgments) extracted from alleged copyright infringers that cannot afford to defend
14 themselves, rather than by selling prospective licenses for use of the photos in its
15 database.
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19 10. Across the complete set of Bank of America statements, four categories of
20 entries have been left unredacted—transfers from different Bank of America
21 accounts; transfers from an entity called "Stripe"; payments by BadAdz Digital, a
22 fellow company of PFP which is owned by PFP's owner Joel Albrizio; and monthly
23 payments in amount of \$499 from a company shown in the bank statements as
24 "REDACTED"
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1 11. I am filing the public version of this affidavit in redacted form (with an
2 unredacted version to be filed under seal), because when we received the set of
3 subscription agreements requested in Document Requests 4 and 5, we agreed to keep
4 the names of PFP's subscribers confidential. And the name "*REDACTED*"
5 appears to correspond with a supermarket chain called "*REDACTED*," which
6 signed a subscription agreement in 2017 requiring monthly payments of \$499. (That
7 agreement is attached, with the company name redacted, as Exhibit HH). In this case,
8 Pool World has claimed for purposes of calculating damages that it charges a
9 minimum \$999 monthly subscription fee. Discovering whether other subscribers, like
10 *REDACTED*, paid substantially less than the claimed minimum during the period
11 of time for which PFP is seeking damages for lost license fees is essential to Pool
12 World's defense that PFP's damages calculation is not only excessive but based on
13 false representations about the minimum monthly fee that PFP demands for access to
14 its database of photos.
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19 12. One of the other Bank of America accounts from which payments were
20 made into the Bank of America accounts whose statements **were** produced (the
21 account name is not redacted) was from "Bank of America Merchant Services." The
22 provided bank statements are so heavily redacted that we cannot tell whether
23 statements from the Merchant Services account have also been provided. However,
24 the Bank of America website shows that Bank of America Merchant services includes
25 credit card processing. <https://promotions.bankofamerica.com/paymentsolutions/>
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1 business-payment-processing. So far as we can see, no statements showing credit
2 card payments have been provided from PFP's merchant services account, or from
3 any account other than the payments from the company identified in ¶¶ 10 and 11.
4 We have asked PFP counsel to clarify whether such an account is one way PFP has
5 received subscription payments, and if so to produce the statements. PFP has not
6 responded to that query; Pool World reserves judgment about whether a motion to
7 enforce will be warranted until after that matter has been fully addressed.
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10 13. Most of the subscription agreements provide that the monthly payments
11 are to be made by credit card. Thus, it is important to be able to have access to the
12 statement from credit card processors, including the Bank of America Merchant
13 Services Account, whose payments into another PFP Bank of America account
14 apparently reflect payments by subscribers.
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17 14. The company Stripe is also a payment processor; its website is
18 www.stripe.com. Moreover, among the documents initially provided in response to
19 Request 15 were a pair of spreadsheets showing the gross amount of "monthly
20 subscription receipts" received from a "third party vendor" during two periods of time
21 in 2020 and 2023-2024. Because it appeared that Stripe is a third party vendor
22 through which PFP's subscribers are making their monthly subscription payments,
23 Pool World have asked PFP to produce the monthly detail of payments that all
24 payment processors, including Stripe, received from each subscriber.
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1 15. This information could be very significant in assisting Pool World's
2 response to PFP's damages claims because it would show how many other
3 subscribers are paying less than \$999 per month, perhaps even less than the \$499 a
4 month apparently received from *REDACTED*. For example, one of subscription
5 agreements produced in discovery, signed in May 2019, provided for an annual
6 subscription payment of \$1188 (that is, \$99 per month). A copy of that agreement,
7 with *REDACTED* located in Alabama, signed by its ad manager *REDACTED*,
8 is attached as Exhibit II. And several of the documents provided in response to
9 Request 14 are emails to representatives of current subscribers, one of which is
10 *REDACTED*. One such email is attached as Exhibit JJ. The domain name
11 *REDACTED* resolves to the website of a company called *REDACTED*,
12 located at the same address in Alabama as the signer of Exhibit HH. The implication
13 is that the company that signed the \$99 per month agreement is still a subscriber. The
14 payment detail from Stripe would reveal whether that company continued to pay an
15 annualized \$99 per month throughout the period during which PFP contends that the
16 lost license fee that it is entitled to recover from Pool World is \$999 per month.
17 Based on scrutiny of the emails to subscribers and comparing the domain names to
18 the subscription agreements, counsel concluded that revealing the discrete payment
19 information from payment processors such as Stripe could identify other subscribers
20 that may be paying less than \$999 per month.
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1 16. PFP initially refused to produce documents showing the monthly payment
2 detail from Stripe on the ground that Stripe is a third party whose records are outside
3 PFP's possession, custody or control. Undersigned counsel pointed out in response
4 that Stripe's own website indicates that users "own" their data on Stripe, that Stripe
5 "make[s] sure that you have access to this data," and that Stripe "makes all your
6 transactional data available within an interactive SQL environment in the Stripe
7 Dashboard." See <https://docs.stripe.com/get-started/data-migrations/pan-export>;
8 <https://docs.stripe.com/stripe-data/access-data-in-dashboard>. But during the meet
9 and confer on February 5, PFP counsel Lauren Hausman related that she had
10 discussed access to Stripe with her client's officer Douglas Fleurant that very day,
11 just before our call, and that Fleurant "swore up and down" that he had no access to
12 account detail at Stripe, and had no idea how to get it. Counsel also represented that
13 their client had said that they did not need subscriber-by-subscriber payment data
14 because they knew what total payments were expected each month, and if that total
15 were not met, then they would know that someone wasn't paying.
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21 17. Since that meet and confer, counsel for PFP acknowledged that their
22 client's granular data is, in fact, available on Stripe's database, and on the evening of
23 February 21, they produced spreadsheets showing Stripe payment data for each month
24 from 2017 to 2024. The spreadsheets are attached as Exhibit KK (with names and
25 email addresses redacted). They reveal monthly payment data for only **one** subscriber
26 in most of the months from 2017 to 2020, for no subscribers in 2021 and 2022, and
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1 for several subscribers in 2023 and 2024. The monthly payment amounts in the latter
2 years including monthly payments of \$95, \$299, \$499 (not *REDACTED*.), \$500
3 and \$750. In sum, no individualized payment data regarding each subscribing
4 company has been provided for any period from 2017 to 2022, other than the one
5 subscriber per month data in 2017 to 2020, and payments to Bank of America from
6 the supermarket chain discussed in paragraphs 8 and 9, above. PFP counsel
7 represented that their client has no access to data from other (unidentified) “prior”
8 payment processors for other years. Considering that PFP told its counsel the same
9 thing about Stripe, until we were able to show PFP counsel that their client’s
10 representation was wrong, Pool World cannot take PFP’s representations about access
11 at face value, but will continue to confer about getting access to individualized
12 payment data. Until that process is completed, Pool World reserves judgment about
13 whether a further motion to enforce, or a motion for spoliation remedies for failure
14 to preserve relevant documents, will be warranted.

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19 18. In this regard, none of the documents produced show the amount of
20 payments received from *REDACTED*. Considering that Exhibit JJ implies that
21 this company remains a subscriber, it beggars belief that PFP would have no
22 documents showing its periodic payments.
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25 19. The complaint in this case, dated June 2, 2023 alleges, in the present tense,
26 that PFP “charges its clients . . . a minimum monthly fee of \$999.00.” It appears that
27 this allegation was false at the time. And throughout 2023 and 2024, PFP’s Director
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1 of Intellectual Property Rebecca Jones submitted affidavits in support of default
2 judgment motions in other PFP infringement lawsuits, and PFP submitted briefs that
3 it knew would be considered ex parte, asserting that \$999 is the minimum
4 subscription fee. These averments appear to conflict with the Stripe payment data
5 now provided.
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7 20. There are also serious reasons to doubt that PFP has fully complied with
8 the Court's December 16 order to respond fully to Request 14. For example, many
9 of the subscription agreements provide that the agreements terminate after one year
10 (or some other period) unless they are expressly renewed. Review of the domain
11 names of the recipients in a number of the emails provided in compliance with
12 Request 14 resolve to the email addresses of known subscribers. But PFP has not
13 produced any correspondence about renewal, nor any renewal agreements for
14 companies whose initial monthly fees were under \$999 (which would reveal whether
15 the rates were still under \$999). Moreover, a February 2024 email included a thread
16 between PFP owner Joel Albrizio and Rebecca Jones and Douglas Fleurant, including
17 the following:
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24 joel albrizio <joel@bad-adz.com>

Fri, Feb 2, 2024 at 8:18 PM

To: Rebecca Jones <rebecca@preparedfoodphotos.com>, Doug Fleurant <doug@bad-adz.com>

25 This price must move to \$999 upon expiration or they are out! Give them proper notice.....Let me know the date of
26 expiration, Joel

27 [Quoted text hidden]

28 [Quoted text hidden]

1 21. Plainly, all of PFP's principals are aware that some subscribers are paying
2 less than \$999 per month, despite PFP's contrary representations in this case and
3 others. But the email, or two emails, that produced Albrizio's reaction have not been
4 produced. ("[Quoted text hidden]" appears in very faint grey, repeated twice, below
5 Albrizio's emphatic direction), have not been produced. Nor has the email to the
6 subscriber, "giv[ing] proper notice," been produced; nor have any responses from the
7 subscriber been produced. Nor have **any** other emails giving notice about contract
8 extensions or terminations been produced. But the Albrizio email implies that there
9 is a standardized approach to such notices. The implication here is that there is a
10 whole category of emails that may have been missed.
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14 22. During the February 5 telephonic meet and confer, counsel for PFP Mr.
15 DeSouza provided a detailed explanation of how his email records had been searched
16 for responsive documents (noting that his firm deletes all email after one year), but
17 there was no explanation about how PFP's own emails had been searched. PFP
18 counsel had not responded to questions about how that search was conducted.
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21 23. Moreover, a number of the domain names of the recipients of the emails
22 provided in response to Request 14 (including Exhibit JJ) resolve to websites of
23 companies for which no subscription agreements were provided in response to
24 Requests 4 and 5.
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26 24. Pool World reserves judgment about whether a further motion to compel
27 or to enforce the Court's December 2024 order regarding these missing
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1 communications requested by Request 14 is warranted until PFP has fully addressed
2 these concerns, or declined to address them.

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4 Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of
5 perjury that the foregoing is true and correct. Executed on
6 February 25, 2025.

7 /s/ Paul Alan Levy
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